

UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION

IN RE: ASBESTOS PRODUCTS LIABILITY  
LITIGATION (No. VI)

George Bolton, et al. v. Air & Liquid Systems Corporation, et al., )  
E.D. Pennsylvania, C.A. No. 2:12-60128 )  
(N.D. California, C.A. No. 4:12-00723) )

4:12-723

MDL No. 875

SEPARATION OF CLAIMS AND REMAND ORDER

**Before the Panel:**\* Pursuant to Rule 10.2, defendants Air & Liquid Systems Corporation and Burnham Corporation move to vacate the Panel's order, issued at the suggestion of the transferee court, conditionally remanding this action (*Bolton*) to the Northern District of California, with the exception of any claims for punitive or exemplary damages that have previously been severed by the transferee court.<sup>1</sup> Defendants Lennox Industries Inc. and Kelly-Moore Paint Company, Inc., support the motion. Responding plaintiff Lindy Dawn Guenther opposes the motion.

In opposing remand, defendants argue that some discovery remains to be taken in the action. They point out that this action was commenced as a personal injury action, but that, in July 2013 – following the deaths of the two initially-named plaintiffs (and shortly before the issuance of the Suggestion of Remand) – an amended complaint was filed on Guenther's behalf seeking damages for wrongful death.<sup>2</sup> Defendants contend that they have not yet had an opportunity to conduct discovery on the damages claims unique to Guenther. Plaintiff does not contest defendants' assertion, but argues that such discovery can take place post-remand.

After considering all argument of counsel, we will deny defendants' motion. Section 1407 does not require that *all* pretrial proceedings be completed prior to remand. *See* 28 U.S.C. § 1407(a) ("Each action so transferred shall be remanded by the panel at or before the conclusion of such pretrial proceedings to the district from which it was transferred unless it shall have been previously terminated. . . ."). Here, the parties are in agreement that a limited amount of discovery remains to be taken in the action. There appears to be no advantage to delaying remand so that such discovery can be completed in the transferee district.

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, all claims in *Bolton*, except the severed claims for punitive or exemplary damages, are remanded to the Northern District of California.

\* Judge Marjorie O. Rendell and Judge Lewis A. Kaplan took no part in the decision of this matter.

<sup>1</sup> *See In re Collins*, 233 F.3d 809, 812 (3d Cir. 2000).

<sup>2</sup> Guenther is the daughter of the original plaintiffs.

A TRUE COPY CERTIFIED TO FROM THE RECORD

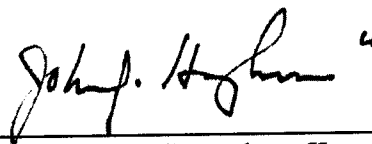
DATED: 12/16/13

TEST: Tom Dwyer

DEPUTY CLERK, UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

- 2 -

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in black ink, appearing to read "John G. Heyburn II", is positioned above a horizontal line.

John G. Heyburn II  
Chairman

Paul J. Barbadoro  
Sarah S. Vance

Charles R. Breyer  
Ellen Segal Huvelle